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DICK/MORGANTI, DICK CORPORATION, THE MORGANTI GROUP,  
12 AMERICAN CASUALTY COMPANY OF READING, PA and  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA  
13

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION  
16

17 UNITED STATES OF AMERICA for the Use and  
Benefit of WEBCOR CONSTRUCTION, INC. dba  
18 WEBCOR BUILDERS, and WEBCOR  
CONSTRUCTION, INC. dba WEBCOR  
19 BUILDERS,

20 Plaintiffs,

21 vs.

22 DICK/MORGANTI, a joint venture, DICK  
CORPORATION, THE MORGANTI GROUP,  
23 AMERICAN CASUALTY COMPANY OF  
READING, PA, NATIONAL UNION FIRE  
24 INSURANCE COMPANY OF PITTSBURGH, PA,  
and DOES 1 through 10, inclusive,

25 Defendants.  
26

27 AND RELATED COUNTER-CLAIMS AND  
THIRD PARTY CLAIMS.  
28

Case No.: 3:07-CV-02564-CRB

**DECLARATION OF JOEL D.  
HEUSINGER IN OPPOSITION TO  
WEBCOR'S MOTION TO LIFT  
STAY**

Date: August 29, 2008

Time: 10:00 a.m.

Place: Courtroom 8

Before: Hon. Charles R. Breyer

1 I, Joel D. Heusinger, declare:

2 1. I am an attorney at law and a partner in the law firm of Woods & Aitken LLP in  
3 Lincoln, Nebraska. My practice is focused on the prosecution and defense of claims arising out of  
4 construction projects. For over 20 years, I have represented clients in such disputes throughout the  
5 United States, and I have experience before various government boards, including the Civilian  
6 Board of Contract Appeals (and its predecessor Board), which hears claims against the GSA.

7 2. Since mid-2005, I have represented the Dick/Morganti Joint Venture ('D/M'), which  
8 was the general contractor for the San Francisco Federal Building. I have had a number of  
9 communications with D/M's subcontractors, including Webcor, regarding the change order  
10 requests and claims that have arisen from the Project. I have personal knowledge of the facts  
11 stated in this declaration.

12 3. I have read the declaration of Webcor's counsel, Ken Jones, submitted in support of  
13 Webcor's Motion to Lift Stay. In particular, I have read his statement that "Mr. Heusinger agreed  
14 [on January 25, 2008] that if the Contracting Officer did anything other than accept Webcor's  
15 certified claims by the mid-April [2008] deadline promised by the GSA, that D/M would  
16 immediately appeal the Contracting Officer's decision and seek an immediate appeal of Webcor's  
17 CORs." Mr. Jones is mistaken. I never made any such promise. Rather, I said that Webcor's  
18 claims would be included as part of D/M's global/omnibus claim, and that D/M would diligently  
19 prosecute those claims. That is exactly what D/M has done. In fact, D/M has certified and  
20 requested a Contracting Officer's Final Decision with respect to Webcor's CORs 60, 61 and 62.

21 4. I was taken aback by the statement in Mr. Jones' declaration. From April to July  
22 2008, I have received no calls from Webcor requesting or suggesting that a separate appeal be  
23 filed. Before reviewing Webcor's papers, I had no notice that Webcor believed D/M had failed to  
24 live up to a promise to file a separate appeal of Webcor's claim.

25 5. Based on my experience with government boards, I did not believe that filing a  
26 separate appeal on Webcor's behalf would expedite resolution of any aspect of the case,  
27 particularly where the Contracting Officer had not yet issued her Final Decision. To the contrary,  
28

1 in my experience, appeals arising out of the same project are generally consolidated and serious  
2 efforts at scheduling do not take place until all of the anticipated appeals have been received.

3 6. On August 5, 2008, I met with Mr. Jones (and with his partner, Rick Bowles) at  
4 Thelen's San Francisco office. Among other things, we discussed the claim that I had promised  
5 that D/M would separately appeal Webcor's claim. I told Mr. Jones I thought he was mistaken  
6 about his recitation of the January 25, 2008 meeting, but at the same time, we asked if Webcor  
7 wanted its claim to be appealed on a "deemed denial" basis (which is the only way because the  
8 Contracting Officer has still not issued her final decision). Mr. Jones and Mr. Bowles said that  
9 they did want such an appeal filed. D/M's representatives immediately agreed, and such an appeal  
10 has already been drafted by D/M's counsel, approved by Webcor and filed with the Board.

11 7. In addition, at the August 5, 2008 meeting, D/M's representatives made suggestions  
12 to assist in the prosecution of Webcor's claims, including requesting a separate status conference  
13 for the new Webcor appeal. At the meeting, Webcor took that suggestion under advisement, but  
14 on the evening of August 7, confirmed that it would like this request to be made. The request was  
15 made the next day, in writing, to the Board.

16 8. In his declaration, and at the August 5, 2008 meeting, Webcor also voiced  
17 frustration at delays by the Contracting Officer in responding to Webcor's claims. I share Webcor's  
18 frustration in this regard, and note that this problem is not limited to Webcor's claim. This is why  
19 D/M is intensifying its efforts to prosecute all of the claims against the GSA.

20 9. In late July, before receiving any notice of the filing of Webcor's motion, Ken Jones  
21 e-mailed me stating he just found out D/M's previous local counsel, Ray Buddie and Rick Grady  
22 were no longer representing D/M and that Ken was concerned that such action would delay the  
23 claim resolution process. Mr. Jones also expressed concerns for the first time that an appeal had  
24 not been filed. I immediately called and e-mailed Ken Jones to explain all that had been  
25 accomplished during the intervening time, including filing the damage section of the omnibus  
26 claim, engaging Thelen to assist in the prosecution of the claim before the Board, meetings with  
27 the other project subcontractors and the recent status conference before Judge Borwick. I also told  
28 Mr. Jones we were scheduled to meet with various subcontractors the week of August 4 and that

1 we would be happy to meet with him at that time and further explain the status of the claim  
2 prosecution process. Mr. Jones indicated he was unaware of all of these developments, and he  
3 would like to meet to talk about them further. Only after this communication did I subsequently  
4 become aware Webcor filed the current motion.

5 10. From the time I first became involved, and throughout 2008, D/M has been doing  
6 everything possible to resolve change order requests, obtain payment from the GSA and prosecute  
7 the global/omnibus claim on behalf of D/M and its subcontractors. For the last few months, and  
8 currently, my efforts have been focused on working with those subcontractors who have yet to  
9 quantify and certify their portions of the claim.

10 11. This is essential because unless or until D/M has claims in exact dollar amounts,  
11 and that have been properly certified, and that D/M is able to satisfy itself are properly certified to  
12 the GSA, D/M cannot submit those claims to the Contracting Officer, which is a prerequisite to  
13 the filing of appeals with the Board. In fact, the April 2008 claim submitted by D/M has a number  
14 of 'blanks' for subcontractors (not including Webcor) that had yet to quantify or properly certify  
15 their claims. As recently as August 4 through 6, 2008, I was in San Francisco, meeting with  
16 various subcontractors and attempting to persuade subcontractors to quantify and certify their  
17 claims as quickly as possible.

18 12. As stated in my communication with Ken Jones in June 2008, D/M retained the  
19 Thelen firm which will bring additional resources (particularly in Washington, D.C.) and attorneys  
20 who specialize in prosecuting claims against the GSA to assist in pushing the claims forward.

21 13. D/M has also been attempting to expedite matters in its communications with the  
22 Board. Most recently, on July 22, 2008 (ironically, just two days before the filing of Webcor's  
23 motion), I participated in a status conference before CBCA Judge Borwick, who has been assigned  
24 to hear the appeals arising out of the Project. Working with Thelen's attorneys, we raised the issue  
25 of the forthcoming appeals of the global/omnibus claim. We did so in order to make progress in  
26 the scheduling associated with those anticipated appeals, even though the Contracting Officer has  
27 not issued her final decision, and even though no appeals have yet been docketed.

28

1 14. GSA resisted these efforts, stating that it was unable to make a commitment of a  
2 date certain by which it would have issued its final decision on the appeals that have been  
3 submitted to it, including the Webcor claim and the April 28, 2008 quantification of claims.

4 15. We were pleased with the result. Judge Borwick set a further status conference of  
5 January 25, 2009, at which time he said he would address the scheduling for the entire matter,  
6 regardless of whether the Contracting Officer had issued her final decision with respect to any of  
7 those claims. As a result, we already have a status conference scheduled for the remaining claims,  
8 and have continued to establish a record of attempts to expedite resolution.

9 16. The issue of interest came up at that status conference, which is an important issue  
10 to D/M and its subcontractors, including Webcor. When GSA's counsel suggested that interest  
11 should not run until all of the claims were submitted, Judge Borwick responded that interest would  
12 run from the date the omnibus claim was submitted.

13 17. The CBCA's Order is attached as Exhibit A, and sets a further status conference for  
14 January 12, 2009 at which time the Board will "discuss the status and possible scheduling of  
15 future proceedings in these appeals and the potential appeal of the Contracting Officer's decision  
16 on appellant's omnibus claim."

17 I declare under penalty of perjury under the laws of the United States of America that the  
18 foregoing is true and correct.

19 Executed this 8th day of August, 2008 at Lincoln, Nebraska.

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23 Joel D. Heusinger  
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